

062683.0476-156

#397

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

FILED: AUGUST 22, 2008

**DANIEL CHIRICO,****Plaintiff,****vs.**

**THE HOME DEPOT USA, INC.,  
a foreign corporation, D/B/A THE HOME  
DEPOT and DIETRICH INDUSTRIES, INC.,  
a foreign corporation, A/K/A DIETRICH  
METAL FRAMING,**

**Defendants.**

08CV4813

JUDGE HOLDERMAN

MAGISTRATE JUDGE COLE

**No: BR****Circuit Court of Cook County****No: 08 L 007897**

**NOTICE OF REMOVAL**

One of the defendants, DIETRICH INDUSTRIES, INC., a Pennsylvania corporation, comes before the Court by its attorney, JAMES A. LaBARGE, and pursuant to 28 U.S.C. Secs. 1332 and 1441 *et seq.*, serves notice of removal of the cause encaptioned *Daniel Chirico v. The Home Depot USA, Inc., et al.*, presently pending in the Circuit Court of Cook County under Docket No. 08 L 7897, to the U.S. District Court for the Northern District of Illinois, Eastern Division. In support of its Notice of Removal, this Defendant states as follows:

1. This Defendant was served with Summons and Complaint in the above cause on July 29, 2008.
2. This defendant is a Pennsylvania corporation with its principal place of business in the State of Pennsylvania; as such, Dietrich Industries, Inc., is a citizen of the State of Pennsylvania.
3. Upon information and belief, the Defendant The Home Depot is a Delaware corporation with its principal place of business in Atlanta, Georgia; as such, it is not a citizen of the State of Illinois. Further, The Home Depot consents to this Removal.
4. As appears on the face of plaintiff's Complaint, a true and correct copy of which is attached to this Notice of Removal and, with Summons served on this Defendant, incorporated herein as *Exhibit A*, plaintiff does not allege that he is a citizen of the States of Pennsylvania,

Delaware or Georgia. On information and belief, the plaintiff resides in New Lenox, Illinois, and he is a citizen of the State of Illinois.

5. For the above reasons there is diversity of citizenship pursuant to 28 U.S.C. Sec. 1332.

6. Although the *ad damnum* clauses of each of the plaintiff's four counts in his refiled Complaint claim that the plaintiff seeks judgment not exceeding \$74,999.99, the plaintiff's settlement demand is in excess of \$75,000 and his counsel promises to ask a jury to award an amount far greater than \$130,000.

7. Attached to this Notice as *Exhibit B* is plaintiff's counsel's three-page correspondence dated February 13, 2007, to the claims representatives for The Home Depot and Dietrich Industries. In the penultimate paragraph of that correspondence, Mr. Hecht states the following, in pertinent part:

...in consideration of Mr. Chirico's objective injuries, including but not limited to pain and suffering, disfigurement and loss of normal life, medical bills in excess of \$37,000, and lost wages in the amount of \$3,502.00, our demand for settlement of this matter prior to suit is **\$130,000.00**. Please be advised that at trial we will ask a jury to award an amount far greater than our stated demand. (Emphasis in original.)

8. The plaintiff has provided no stipulation that binds him to seeking less than \$75,000 at the time of settlement or trial.

9. As amendments to pleadings are liberally allowed, it is not only possible but likely, given the plaintiff's settlement demand, that the plaintiff will amend his Complaint more than one year from now to seek judgment in excess of \$75,000 at a time when the Defendants are no longer permitted to remove this case based upon Diversity of Citizenship.

10. Based upon plaintiff's counsel's comments and settlement demand and the fact that the *ad damnum* clauses in the plaintiff's refiled Complaint are non-binding and subject to amendment, this Defendant holds the good faith belief that the plaintiff seeks money damages in excess of \$75,000 and, thus, the amount in controversy exceeds \$75,000.

11. —This Notice of Removal is filed on the 24<sup>th</sup> day after this Defendant's receipt of notice of this suit being filed against it, through service of Summons and Complaint on its Registered Agent on July 29, 2008.

WHEREFORE, for all the above reasons, this defendant, DIETRICH INDUSTRIES, INC., a Pennsylvania corporation, serves notice that the above cause now pending in the Circuit Court of Cook County is removed to the U.S. District Court for the Northern District of Illinois, Eastern Division, *instantly*.

DIETRICH INDUSTRIES, INC.,  
a Pennsylvania corporation

By: /s/James A. LaBarge  
James A. LaBarge, its Attorney

James A. LaBarge  
PRETZEL & STOUFFER, CHARTERED  
One South Wacker Drive  
Suite 2500  
Chicago, IL 60606  
(312) 578-7710

**CERTIFICATE OF SERVICE**

A copy of the **Defendants' Notice of Removal, Civil Sheet, and Appearance** was filed electronically this **22nd day of August, 2008**. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the court's electronic system.

**ATTORNEY FOR PLAINTIFF**

Brian R. Hecht  
Richard F. Mallen & Associates, Ltd.  
228 South Wabash Avenue, 7<sup>th</sup> Floor  
Chicago, IL 60604  
312-346-0500  
312-346-5778 fax  
[bhecht@mallenlaw.com](mailto:bhecht@mallenlaw.com)

**ATTORNEY FOR The Home Depot U.S.A., Inc. d/b/a The Home Depot**

John P. McCorry  
Loari O'Halloran  
McVey & Parsky, LLC  
30 North LaSalle Street, Suite 2100  
Chicago, IL 60602  
(312) 551-2130  
(312) 551-2131 (fax)  
[jpm@mcveyparsky-law.com](mailto:jpm@mcveyparsky-law.com)

Respectfully submitted,

/s/James A. LaBarge  
**PRETZEL & STOUFFER, CHARTERED**  
One S. Wacker Drive  
Suite 2500  
Chicago, IL 60606  
Telephone: (312) 578-7710  
Fax: (312) 346-8242  
[jlabarge@pretzel-stouffer.com](mailto:jlabarge@pretzel-stouffer.com)  
*Attorney for Defendant, Dietrich*

I.D.# 26129

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

DANIEL CHIRICO,

Plaintiff,

v.

THE HOME DEPOT USA, INC.,  
a foreign corporation, D/B/A THE HOME  
DEPOT and DIETRICH INDUSTRIES INC.,  
a foreign corporation, A/K/A DIETRICH  
METAL FRAMING,

Defendants.

Court No.:

≤ \$74,999.99

COMPLAINT AT LAW

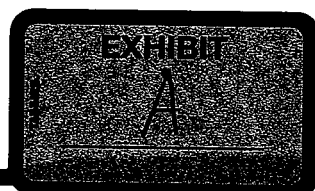
Plaintiff, DANIEL CHIRICO, by his attorneys, RICHARD F. MALLEN & ASSOCIATES, LTD., complaining of the Defendants, THE HOME DEPOT USA, INC., a foreign corporation D/B/A THE HOME DEPOT (hereinafter referred to as "HOME DEPOT") and DIETRICH INDUSTRIES, INC., a foreign corporation, A/K/A DIETRICH METAL FRAMING, (hereinafter referred to as "DIETRICH") and for each of them, states:

COUNT I

NEGLIGENCE – THE HOME DEPOT

Plaintiff, DANIEL CHIRICO, complaining of Defendant THE HOME DEPOT USA, INC., a foreign corporation, D/B/A THE HOME DEPOT (hereinafter referred to as "HOME DEPOT"), states:

1. This is a refiled case. The prior case was filed as Daniel Chirico v. The Home Depot USA, Inc., a foreign corporation, d/b/a The Home Depot and Dietrich Industries Inc., a



foreign corporation, a/k/a Dietrich Metal Framing, Case Number 07 L 04267 in the Circuit Court of Cook County, was removed to the 7<sup>th</sup> Circuit Federal Court under Case Number 07 cv 03613 and voluntarily dismissed on July 23, 2007.

2. On or about April 26, 2005, Defendant, HOME DEPOT, was a foreign corporation authorized to do business in the State of Illinois, including the retail store number 1943, located at 475 Schmale Road, Carol Stream, Illinois.

3. On or about April 26, 2005, Defendant HOME DEPOT, owned operated, managed, and maintained HOME DEPOT store number 1943, located at 475 Schmale Road, Carol Stream, Illinois. (hereinafter referred to as "HOME DEPOT 1943")

4. On or about April 26, 2005, Defendant HOME DEPOT, invited the general public, including the Plaintiff DANIEL CHIRICO, to enter and exit HOME DEPOT 1943 for the purpose of purchasing retail goods and/or services.

5. On or about April 26, 2005, Defendant HOME DEPOT, individually and through its agents and employees of HOME DEPOT 1943, owed a duty to Plaintiff DANIEL CHIRICO and all other persons lawfully on the premises, to keep its store, HOME DEPOT 1943, in a reasonably safe condition.

6. On or about April 26, 2005, Plaintiff DANIEL CHIRICO, was lawfully on the premises of Defendant's HOME DEPOT store, HOME DEPOT 1943, for the purpose of purchasing retail goods, in particular metal corner bead.

7. On and prior to April 26, 2005, Defendant, HOME DEPOT, individually and through its agents and employees of HOME DEPOT 1943, breached its duty and was negligent in one or more of the following ways:

- a. Defendant stocked, stored, placed and /or displayed for sale, metal corner bead on a shelf above the floor level;
- b. Defendant stocked, stored, placed and/or displayed for sale, a partially opened box or container that contained metal corner bead, on a shelf above the floor level;
- c. Defendant failed to post adequate instructions and warning labels to warn customers of the dangers associated with the handling of the metal corner bead;
- d. Defendant failed to inspect its metal corner bead to make certain that they were stocked, stored, placed and displayed for sale, in a safe and proper condition.

8. As a direct and proximate result of one or more of the aforementioned negligent acts or omissions, Plaintiff, DANIEL CHIRICO, suffered, and will continue to suffer in the future, injuries of a personal and pecuniary nature.

WHEREFORE, Plaintiff, DANIEL CHIRICO, prays for judgment against Defendant, THE HOME DEPOT USA, INC., a foreign corporation, D/B/A THE HOME DEPOT, for a sum not to exceed Seventy-Four Thousand Nine Hundred Ninety-Nine Dollars and Ninety-Nine cents (\$74,999.99), plus costs.

## COUNT II

### STRICT LIABILITY – THE HOME DEPOT

Plaintiff, DANIEL CHIRICO, complaining of Defendant THE HOME DEPOT USA, INC., a foreign corporation, D/B/A THE HOME DEPOT (hereinafter referred to as "HOME DEPOT"), states:

1. This is a refiled action. The prior action was filed as Daniel Chirico v. The Home Depot USA, Inc., a foreign corporation, d/b/a The Home Depot and Dietrich Industries Inc., a foreign corporation, a/k/a Dietrich Metal Framing, Case Number 07 L 04267 in the Circuit Court

of Cook County, was removed to the 7<sup>th</sup> Circuit Federal Court under Case Number 07 cv 03613 and voluntarily dismissed on July 23, 2007.

2. On or about April 26, 2005, Defendant, HOME DEPOT, was a foreign corporation authorized to do business in the State of Illinois, including the retail store number 1943, located at 475 Schmale Road, Carol Stream, Illinois.

3. On or about April 26, 2005, Defendant HOME DEPOT, owned operated, managed, and maintained HOME DEPOT store number 1943, located at 475 Schmale Road, Carol Stream, Illinois. (hereinafter referred to as "HOME DEPOT 1943")

4. On or about April 26, 2005, Defendant HOME DEPOT, invited the general public, including the Plaintiff DANIEL CHIRICO, to enter and exit HOME DEPOT 1943 for the purpose of purchasing retail goods and/or services.

5. On or about April 26, 2005, Defendant HOME DEPOT, individually and through its agents and employees of HOME DEPOT 1943, owed a duty to Plaintiff DANIEL CHIRICO, to keep its store, HOME DEPOT 1943 in a reasonably safe condition for the Plaintiff and all other persons lawfully on the premises.

6. On or about April 26, 2005, Plaintiff DANIEL CHIRICO, was lawfully on the premises of Defendant's HOME DEPOT store, HOME DEPOT 1943, for the purpose of purchasing retail goods, in particular metal corner bead.

7. On and prior to April 26, 2005, Defendant, HOME DEPOT, individually and through its agents and employees of HOME DEPOT 1943, breached its duty and took actions that were unreasonably dangerous in one or more of the following ways:

- a. Metal corner bead was stocked, stored, placed and /or displayed for sale, on a shelf above the floor level;



- b. Metal corner bead was stocked, stored, placed and/or displayed for sale, in a partially opened box or container that contained metal corner bead, on a shelf above the floor level;
- c. Failed to post adequate instructions and warning labels to warn customers of the dangers associated with the handling of the unreasonably dangerous metal corner bead;
- d. Failed to inspect its metal corner bead to be certain that they were not stocked, stored, placed and displayed in an unreasonably dangerous condition for purchase.

8. As a direct and proximate result of one or more of the aforementioned unreasonably dangerous acts or omissions, Plaintiff, DANIEL CHIRICO, suffered, and will continue to suffer in the future, injuries of a personal and pecuniary nature.

WHEREFORE, Plaintiff, DANIEL CHIRICO, prays for judgment against Defendant, THE HOME DEPOT USA, INC., a foreign corporation, for a sum not to exceed Seventy-Four Thousand Nine Hundred Ninety-Nine Dollars and Ninety-Nine cents (\$74,999.99), plus costs.

### COUNT III

#### STRICT PRODUCT LIABILITY - DIETRICH INDUSTRIES, INC.

Plaintiff, DANIEL CHIRICO, complaining of Defendant, DIETRICH INDUSTRIES, INC., a foreign corporation, A/K/A DIETRICH METAL FRAMING (hereinafter referred to as "DIETRICH") states:

1. This is a refiled action. The prior action was filed as Daniel Chirico v. The Home Depot USA, Inc., a foreign corporation, d/b/a The Home Depot and Dietrich Industries Inc., a foreign corporation, a/k/a Dietrich Metal Framing, Case Number 07 L 04267 in the Circuit Court

of Cook County, was removed to the 7<sup>th</sup> Circuit Federal Court under Case Number 07 cv 03613 and voluntarily dismissed on July 23, 2007.

2. On or about April 26, 2005, Defendant, DIETRICH, designed, manufactured, distributed and sold a product known as metal corner bead which was offered for sale to the public.

3. On or about April 26, 2005, and prior thereto, Defendant DIETRICH, had placed the metal corner bead into the stream of commerce.

4. On or about April 26, 2005, Plaintiff DANIEL CHIRICO, was lawfully on the premises of Co-Defendant HOME DEPOT'S store, HOME DEPOT 1943, for the purpose of purchasing retail goods, in particular DIETRICH metal corner bead and injured his hand when he attempted to remove a piece of DIETRICH metal corner bead that was designed, manufactured, distributed and sold by Defendant DIETRICH, from its box or container.

5. On and prior to April 26, 2005, Defendant DIETRICH, had a duty to avoid placing an unreasonably dangerous product into the stream of commerce.

6. On and prior to April 26, 2005, when the subject metal corner bead left the control of Defendant DIETRICH, the metal corner bead was in an unreasonably dangerous condition in one or more of the following ways:

- a. Designed, manufactured and distributed with sharp edges and ends;
- b. Lacked adequate and sufficient warnings related to the handling of the sharp metal corner bead;
- c. Lacked adequate and sufficient instructions informing its users how to safely handle the sharp metal corner bead;
- d. Lacked adequate and sufficient guarding mechanisms to cover the sharp edges and sharp ends.

7. As a direct and proximate result of one or more of the aforementioned unreasonably

dangerous acts or omissions, Plaintiff, DANIEL CHIRICO, suffered, and will continue to suffer in the future, injuries of a personal and pecuniary nature.

WHEREFORE, Plaintiff, DANIEL CHIRICO, prays for judgment against Defendant, DIETRICH INDUSTRIES, INC., a foreign corporation, A/K/A DIETRICH METAL FRAMING for a sum not to exceed Seventy-Four Thousand Nine Hundred Ninety-Nine Dollars and Ninety-Nine cents (\$74,999.99), plus costs.

**COUNT IV**

**NEGLIGENCE- DIETRICH INDUSTRIES, INC.**

Plaintiff, DANIEL CHIRICO, complaining of Defendant, DIETRICH INDUSTRIES, INC., a foreign corporation, A/K/A DIETRICH METAL FRAMING (hereinafter referred to as "DIETRICH") states:

1. This is a refiled action. The prior action was filed as Daniel Chirico v. The Home Depot USA, Inc., a foreign corporation, d/b/a The Home Depot and Dietrich Industries Inc., a foreign corporation, a/k/a Dietrich Metal Framing, Case Number 07 L 04267 in the Circuit Court of Cook County, was removed to the 7<sup>th</sup> Circuit Federal Court under Case Number 07 cv 03613 and voluntarily dismissed on July 23, 2007.

2. On or about April 26, 2005, Defendant, DIETRICH, designed, manufactured, distributed and sold a product known as metal corner bead which was offered for sale to the public.

3. On or about April 26, 2005, and prior thereto, Defendant DIETRICH, had placed the metal corner bead into the stream of commerce.

4. On or about April 26, 2005, Plaintiff DANIEL CHIRICO, was lawfully on the

premises of Co-Defendant HOME DEPOT'S store, HOME DEPOT 1943, for the purpose of purchasing retail goods, in particular DIETRICH metal corner bead and injured his hand when he attempted to remove a piece of DIETRICH metal corner bead that was designed, manufactured, distributed and sold by Defendant DIETRICH, from its box or container.

5. On and prior to April 26, 2005, Defendant DIETRICH, had a duty to avoid placing a dangerous or defective product into the stream of commerce.

6. On and prior to April 26, 2005, when the subject metal corner bead left the control of Defendant DIETRICH, Defendant DIETRICH was then and there negligent in one or more of the following ways:

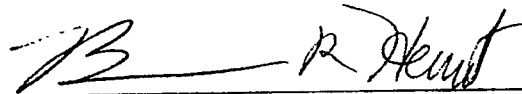
- a. Designed, manufactured and distributed metal corner bead with dangerous and defective sharp edges and ends;
- b. Failed to include or provide adequate and sufficient warnings related to the handling of the sharp metal corner bead;
- c. Failed to include adequate and sufficient instructions informing its users how to safely handle the sharp metal corner bead;
- d. Failed to include adequate and sufficient guarding mechanisms to cover the sharp edges and sharp ends.

7. As a direct and proximate result of one or more of the aforementioned negligent acts or omissions, Plaintiff, DANIEL CHIRICO, suffered, and will continue to suffer in the future, injuries of a personal and pecuniary nature.

WHEREFORE, Plaintiff, DANIEL CHIRICO, prays for judgment against Defendant, DIETRICH INDUSTRIES, INC., a foreign corporation, A/K/A DIETRICH METAL FRAMING for a sum not to exceed Seventy-Four Thousand Nine Hundred Ninety-Nine Dollars and ninety-nine cents (\$74,999.99), plus costs.

Respectfully submitted,  
Plaintiff, DANIEL CHIRICO,

By:

  
BRIAN R. HECHT, One of the Plaintiff's  
Attorneys

RICHARD F. MALLEN & ASSOCIATES, LTD.  
Attorneys for Plaintiff  
228 S. Wabash Ave., 7<sup>th</sup> Floor  
Chicago, IL 60604  
(312) 346-0500  
Fax: (312) 346-5778  
Atty I.D. #26129

Civil Action Cover Sheet - Case Initiation

(Rev. 2/8/06) CCL 0520

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

DANIEL CHIRICO

v.

THE HOME DEPOT USA, INC, a foreign corporation, et., al.,

No.

2008-08-22-07397

FILED

CLERK OF COURT

JANUARY 14 2009

**CIVIL ACTION COVER SHEET - CASE INITIATION**

A Civil Action Cover Sheet - Case Initiation shall be filed with the complaint in all civil actions. The information contained herein is for administrative purposes only and cannot be introduced into evidence. Please check the box in front of the appropriate case type which best characterizes your action. **ONLY ONE (1) CASE TYPE MAY BE CHECKED WITH THIS COVER SHEET.**

Jury Demand ☐ Yes ☒ No**PERSONAL INJURY/WRONGFUL DEATH**

## CASE TYPES:

- ☐ 027 Motor Vehicle  
☐ 040 Medical Malpractice  
☐ 047 Asbestos  
☐ 048 Dram Shop  
☒ 049 Product Liability  
☐ 051 Construction Injuries  
     (including Structural Work Act, Road  
     Construction Injuries Act and negligence)  
☐ 052 Railroad/FELA  
☐ 053 Pediatric Lead Exposure  
☐ 061 Other Personal Injury/Wrongful Death  
☐ 063 Intentional Tort  
☐ 064 Miscellaneous Statutory Action  
     (Please Specify Below\*\*)
- ☐ 065 Premises Liability  
☐ 078 Fen-phen/Redux Litigation  
☐ 199 Silicone Implant

**TAX & MISCELLANEOUS REMEDIES**

## CASE TYPES:

- ☐ 007 Confession of Judgment  
☐ 008 Replevin  
☐ 009 Tax  
☐ 015 Condemnation  
☐ 017 Detinue  
☐ 029 Unemployment Compensation  
☐ 036 Administrative Review Action  
☐ 085 Petition to Register Foreign Judgment  
☐ 099 All Other Extraordinary Remedies

**COMMERCIAL LITIGATION**

## CASE TYPES:

- ☐ 002 Breach of Contract  
☐ 070 Professional Malpractice  
     (other than legal or medical)  
☐ 071 Fraud  
☐ 072 Consumer Fraud  
☐ 073 Breach of Warranty  
☐ 074 Statutory Action  
     (Please Specify Below\*\*)
- ☐ 075 Other Commercial Litigation  
     (Please Specify Below\*\*)
- ☐ 076 Retaliatory Discharge

**OTHER ACTIONS**

## CASE TYPES:

- ☐ 062 Property Damage  
☐ 066 Legal Malpractice  
☐ 077 Libel/Slander  
☐ 079 Petition for Qualified Orders  
☐ 084 Petition to Issue Subpoena  
☐ 100 Petition for Discovery

\*\*

Richard F. Mallen &amp; Assoc.

By:

(Attorney)

(Pro Se)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

2120 - Served  
 2220 - Not Served  
 2320 - Served By Mail  
 2420 - Served By Publication  
 SUMMONS

2121 - Served  
 2221 - Not Served  
 2321 - Served By Mail  
 2421 - Served By Publication  
 ALIAS - SUMMONS

CCG N001-10M-1-07-05 ( )

098751

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
 COUNTY DEPARTMENT, LAW DIVISION

(Name all parties)

DANIEL CHIRICO

v.

THE HOME DEPOT, USA, INC, a foreign corp., and  
 DIETRICH INDUSTRIES INC., a foreign corp.

No. \_\_\_\_\_

DIETRICH INDUSTRIES, INC  
 c/o CT Corporation  
 208 S. LaSalle Street, Ste. 814  
 Chicago, IL 60604  
 TEL CASE # 08L 007897

## SUMMONS

To each Defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, and pay the required fee, in the Office of the Clerk of this Court at the following location:

- ☒ Richard J. Daley Center, 50 W. Washington, Room 801, Chicago, Illinois 60602
- |                                                                                                |                                                                                                   |                                                                                                   |
|------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> District 2 - Skokie<br>5600 Old Orchard Rd.<br>Skokie, IL 60077       | <input type="checkbox"/> District 3 - Rolling Meadows<br>2121 Euclid<br>Rolling Meadows, IL 60008 | <input type="checkbox"/> District 4 - Maywood<br>1500 Maybrook Ave.<br>Maywood, IL 60153          |
| <input type="checkbox"/> District 5 - Bridgeview<br>10220 S. 76th Ave.<br>Bridgeview, IL 60455 | <input type="checkbox"/> District 6 - Markham<br>16501 S. Kedzie Pkwy.<br>Markham, IL 60426       | <input type="checkbox"/> Child Support<br>28 North Clark St., Room 200<br>Chicago, Illinois 60602 |

You must file within 30 days after service of this Summons, not counting the day of service.

IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF REQUESTED IN THE COMPLAINT.

To the officer:

This Summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this Summons shall be returned so endorsed. This Summons may not be served later than 30 days after its date.

Atty. No.: 26129

Name: RICHARD F. MALLIN &amp; ASSOCIATES, LTD

Atty. for: Plaintiff-Daniel Chirico

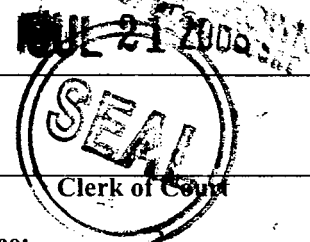
Address: 228 S. Wabash Ave., 7th Floor

City/State/Zip: Chicago, IL 60604

Telephone: 312-346-0500

Service by Facsimile Transmission will be accepted at: \_\_\_\_\_

WITNESS, \_\_\_\_\_



Date of service: \_\_\_\_\_

(To be inserted by officer on copy left with defendant  
 or other person)

(Area Code) (Facsimile Telephone Number)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

SHERIFF'S NUMBER 098751-101L CASE NUMBER 08L007897

DEPUTY:

STROM 10104

FILED DT 07-21-2008 RECEIVED DT 07-21-2008 DIE DT 08-11-2008 MULTIPLE SERVICE 1  
DEFENDANTDIETRICH INDUSTRIES INC  
208 S LA SALLE ST  
CHICAGO IL. 60604  
STE 814ATTORNEY  
RICHARD F MALLIN & ASSOCIATES,  
228 S WABASH AV 7TH FLR  
CHICAGO IL. 60604  
312 346-0500

PLAINTIFF DANIEL CHIRICO

SERVICE INFORMATION: C/O CT CORP RS

\*\*\*\*\*  
(A) I CERTIFY THAT I SERVED THIS SUMMONS ON THE DEFENDANT AS FOLLOWS:

- .....1 PERSONAL SERVICE: BY LEAVING A COPY OF THE SUMMONS AND COMPLAINT WITH THE NAMED DEFENDANT PERSONALLY.
- .....2 SUBSTITUTE SERVICE: BY LEAVING A COPY OF THE SUMMONS AND A COPY OF THE COMPLAINT AT THE DEFENDANT'S USUAL PLACE OF ABODE WITH SOME PERSON OF THE FAMILY OR A PERSON RESIDING THERE, OF THE AGE OF 13 YEARS OR UPWARDS, AND INFORMING THAT PERSON OF THE CONTENTS THEREOF. ALSO, A COPY OF THE SUMMONS WAS MAILED ON THE DAY OF 20, IN A SEALED ENVELOPE WITH POSTAGE FULLY PREPAID, ADDRESSED TO THE DEFENDANT AT HIS OR HER USUAL PLACE OF ABODE.
- X  
.....3 SERVICE ON: CORPORATION X COMPANY X BUSINESS X PARTNERSHIP X  
BY LEAVING A COPY OF THE SUMMONS AND COMPLAINT (OR INTERROGATORIES) WITH THE REGISTERED AGENT, AUTHORIZED PERSON OR PARTNER OF THE DEFENDANT.
- .....4 CERTIFIED MAIL \_\_\_\_\_

(B) THOMAS J. DART, SHERIFF, BY:

*Strom*, DEPUTY 10104

1 SEX FM/F RACE W AGE 60

2 NAME OF DEFENDANT DIETRICH INDUSTRIES INC

WRIT SERVED ON *R Schuly AP*

THIS 29 DAY OF July, 2008 TIME 10:30 A.M./P.M.

ADDITIONAL REMARKS \_\_\_\_\_

\*\*\*\*\*

THE NAMED DEFENDANT WAS NOT SERVED.

TYPE OF BLDG *Ofc*

NEIGHBORS NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

ATTEMPTED SERVICES

DATE TIME A.M./P.M.

REASON NOT SERVED:

- 01 MOVED \_\_\_\_\_ 07 EMPLOYER REFUSAL \_\_\_\_\_
- 02 NO CONTACT \_\_\_\_\_ 08 RETURNED BY ATTY \_\_\_\_\_
- 03 EMPTY LOT \_\_\_\_\_ 09 DECEASED \_\_\_\_\_
- 04 NOT LISTED \_\_\_\_\_ 10 BLDG DEMOLISHED \_\_\_\_\_
- 05 WRONG ADDRESS \_\_\_\_\_ 11 NO REGISTERED AGT. \_\_\_\_\_
- 06 NO SUCH ADDRESS \_\_\_\_\_ 12 OTHER REASONS \_\_\_\_\_
- 13 OUT OF COUNTY \_\_\_\_\_

\_\_\_\_\_ : \_\_\_\_\_

\_\_\_\_\_ : \_\_\_\_\_

\_\_\_\_\_ : \_\_\_\_\_

\_\_\_\_\_ : \_\_\_\_\_

\_\_\_\_\_ : \_\_\_\_\_

\_\_\_\_\_ : \_\_\_\_\_

FEE .00 MILEAGE .00 TOTAL .00

SG10



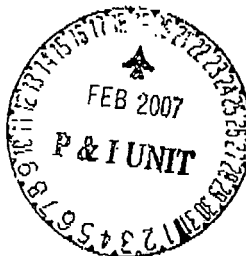
JUN 21 2007 08:24 FR

TO 913123468242

P.02

**Richard F. Mallen**  
 & Associates, Ltd.  
 Attorneys at Law

Richard F. Mallen  
 Robert J. Dargis  
 Brian R. Hecht  
 Maja Rzepka  
 Administrator  
 Juan A. Torres  
 Paralegal



February 13, 2007

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Ms. Kathy Dewitt  
 Sedgwick Claims Management Services, Inc.  
 Home Depot Unit  
 1117 Perimeter Center West, Ste. E-500  
 Atlanta GA 30348

Ms. Melissa Baker  
 Traveler's Insurance  
 57 Prospect St., #4 MSA  
 Hartford, CT 06103-2810

**RE: Sedgwick Claim #: 20050441806**  
**Our File #: 05 - 019**  
**Our Client: Daniel Chirico**  
**Your Insured: The Home Depot U.S.A., Inc.**  
**Date of Injury: April 26, 2005**

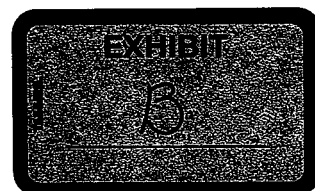
Dear Ms. DeWitt and Ms. Baker:

As you are aware, our law firm represents Daniel Chirico for injuries he suffered on April 26, 2005, at the Home Depot located in Carol Stream, Illinois. As a result of Home Depot's negligent storage, placement and display, of unreasonably sharp and dangerous cornerbead, manufactured by Dietrich Industries, Dan Chirico suffered injuries of a personal and pecuniary nature. For your convenience, the following is a summary of the liability facts:

On April 26, 2005, Mr. Chirico went to the Home Depot home improvement store with the intent of purchasing metal cornerbead. He found the section where the cornerbead and other related products were displayed for sale, located on a shelf about 5 feet off the floor. The products, most of them about 8 feet in length, were freestanding on the shelf. The specific type of cornerbead that Mr. Chirico intended to purchase was in a box, on the aforementioned shelf, that had a pre-existing hole at the bottom through which apparently customers were expected to manipulate and remove the unreasonably sharp product.

As Mr. Chirico attempted to extract a piece of the sharp metal cornerbead through the hole, the box tore open allowing the remainder of the cornerbead to slide downward through the torn portion of the box. Mr. Chirico did not have sufficient time to remove his left hand. The cornerbead raced down his left hand at a high rate of speed and sliced a deep laceration to the left thumb which immediately bled profusely. A manager who was in the vicinity, assessed the situation, retrieved first-aid materials and applied pressure to try to control the bleeding. (See attached Incident Witness Statement)

228 South Wabash Avenue, 7th Floor • Chicago, IL 60604  
 T 312.346.0500 • F 312.346.5778 • info@mallenlaw.com



JUN 21 2007 08:24 FR

TO 913123468242

P.03

Kathy DeWitt/Melissa Baker  
February 13, 2007  
Page 2 of 3

Due to the severity of the injury, Mr. Chirico chose to drive himself to a hospital he was familiar with, located closer to his home. Upon arrival at the emergency room at Silver Cross Hospital, Dr. Manuel Sarroca and Jagdish Muzumdar performed an examination of Mr. Chirico's left hand. Their exam revealed a 2 inch, full thickness laceration to the left thumb, which impaired motor function and thumb movement, and showed evidence of injury to the flexor tendon. X-rays were taken of the left hand to determine if any acute fractures were present.

Fortunately for Mr. Chirico, X-ray results revealed no fractures, however, they showed a clear deformity of the thumb. The laceration was cleansed, closed with stitches and splinted for stability. He was given a Tetanus shot along with Duricef and Tylenol with Codeine for the pain. Mr. Chirico was discharged with instructions to follow-up with Dr. Salvatore Fanto, a board-certified hand surgeon.

Dr. Fanto's evaluation revealed a laceration across the "whole volar surface of the thumb extending into the distal phalanx and proximal phalanx." It also revealed lack of active flexion of the thumb joint and swelling in the other fingers. Dr. Fanto diagnosed Mr. Chirico with a laceration to the flexor pollicia longus tendon and radial digital nerve. The doctor could not rule out additional injury to the ulnar digital nerve at the time of the examination, and he recommended surgical exploration of the wound for tendon and nerve repair. As a result of the severity of the injury, the surgery was scheduled for the next day.

On April 28, 2005, Mr. Chirico underwent surgery and wound exploration at Silver Cross Hospital. During the wound exploration, Dr. Fanto found that the flexor tendon sheath had been severed completely and it was transected distally. The radial digital nerve was also completely transected. Dr. Fanto repaired the damage to Mr. Chirico's tendons and nerves and a short arm cast was applied following the surgery. On May 10, 2005, the surgical sutures were removed, a splint was applied and Mr. Chirico was referred for occupational therapy.

From May 10, 2005 through December 20, 2005, Mr. Chirico underwent follow-up consultations and occupational therapy sessions at Dr. Fanto's clinic. Throughout the treatments, Mr. Chirico complained of numbness, tingling, swelling and limited range of motion with his thumb. On August 2, 2005, the occupational therapist's report indicated that Mr. Chirico failed to make any significant progress regarding his thumb's active range of motion. Due to his left hand's limitations, he was only able to work part-time.

As the therapy progressed, Mr. Chirico began doing a home exercise program for his left hand in addition to his occupational therapy program. His thumb's range of motion improved to a point which allowed him to return to work full-time, despite continuing complaints of persistent tingling and limited range of motion in the thumb area.

Mr. Chirico is employed as chemist and technical manager for Sovereign Specialty Chemicals, an adhesive manufacturer. His work responsibilities require the constant use of both hands. Because of his injury, Mr. Chirico incurred a loss of approximately 17 work days from his employment. At the time of his injury, Mr. Chirico earned a salary of approximately \$75,000.00

Kathy DeWitt/Melissa Baker  
February 13, 2007  
Page 3 of 3

a year. Therefore, Mr. Chirico incurred approximately \$3,502.00 in lost wages. ( $\$75,000/52$  weeks =  $\$1,442.00/7$  days =  $\$206.00$  a day x 17 days =  $\$3,502.00$ .)

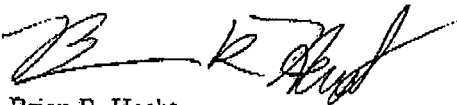
Home Depot, as a retailer of home improvement products, had a duty to supply safe products to customers. The state of Illinois imposes strict liability on a retailer when a product injures a customer. As a result of Home Depot's negligence in the dangerous and improper storage, placement and display of unreasonably sharp and dangerous cornerbead, manufactured and distributed by Dietrich Industries, my client Dan Chirico suffered an injury and disfigurement which he will suffer with for the rest of his life. (See attached pictures)

In light of the clear liability on behalf of the two responsible entities, and in consideration of Mr. Chirico's objective injuries, including but not limited to pain and suffering, disfigurement and loss of normal life, medical bills in excess of \$37,000.00, and lost wages in the amount of \$3,502.00, our demand for settlement of this matter prior to suit is **\$130,000.00**. Please be advised that at trial we will ask a jury to award an amount far greater than our stated demand.

For your convenience, I have enclosed photographs of Mr. Chirico's left thumb and hand, the Home Depot Incident Witness Statement, a Specials Summary and copies of Mr. Chirico's medical bills and records for your review. After you have had a chance to review these enclosures, please contact me to further discuss settlement of this matter.

Very truly yours,

RICHARD F. MALLEN & ASSOCIATES, LTD.



Brian R. Hecht

BRH/jat  
Enclosures